

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JEROME RICHARDSON,

Petitioner,

v.

DAVID J. EBBERT,

Respondent.

No. 4:18-CV-01749

(Judge Brann)

(Magistrate Judge Carlson)

ORDER

APRIL 8, 2019

Jerome Richardson, a federal inmate, filed a 28 U.S.C. § 2241 petition in which he asserted that one of his sentencing enhancements is no longer valid in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). (Doc. 1). This Court concluded that Richardson’s claim should be presented—in a 28 U.S.C. § 2255 motion—to the district court that sentenced Richardson, and therefore transferred the action to the United States District Court for the Northern District of Ohio (“Sentencing Court”). (Docs. 7, 8). Richardson thereafter filed the pending motion to reopen the case, in which he argues that this Court should exercise jurisdiction over his § 2241 petition because of undue delay in the issuance of a decision by the Sentencing Court. (Doc. 11).

In January 2019, Magistrate Judge Martin C. Carlson issued a Report and Recommendation, recommending that this Court deny the motion to reopen because

Richardson has presented no legitimate grounds to reconsider the Court's previous ruling, and because Richardson's claim does not fit within § 2241's savings clause. (Doc. 13). Richardson filed timely objections to the Report and Recommendation in which he again asserts that this Court should reopen the case because the Sentencing Court has not yet ruled on Richardson's § 2255 motion. (Doc. 15).

“If a party objects timely to a magistrate judge's report and recommendation, the district court must ‘make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’” *Equal Emp't Opportunity Comm'n v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)). District courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72.31.

After conducting de novo review of the Report and Recommendation, the Court finds no error in the recommendation. If Richardson believes there is undue delay in the issuance of a decision by the Sentencing Court with respect to his pending § 2255 motion, the appropriate avenue to address that concern is the filing of a petition for a writ of mandamus with the United States Court of Appeals for the Sixth Circuit. Such delay is not, however, reason to reopen this matter. Consequently, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Martin C. Carlson's Report and Recommendation (Doc. 13) is **ADOPTED**;
2. Richardson's motion to reopen (Doc. 11) is **DENIED**; and
3. Richardson's motions for summary judgment (Doc. 19) and to supplement his § 2241 petition (Doc. 20) are **DENIED as moot**.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann
United States District Judge